

Mr. COHEN. Mr. Stuckey, he is a stockholder in a corporation. He has joined with many other stockholders. He is not seeking individual advice and he doesn't get it, and all the services that attend it. He is in a company that grows. Now, any normal corporation that has big buying power has the ability to obtain its supplies, its services, or what-have-you, on a basis which takes into account its size. All we are saying here is that in this area those common, everyday rules ought to apply to an equal measure.

Mr. STUCKEY. Then you back up your statement that the dollar cost to the individual for his management fees is relatively small.

Mr. COHEN. The amount to the individual investor, depending on his investment, may be small, but I don't know what you mean by "relatively."

Mr. STUCKEY. You said in your memorandum that it was.

Mr. COHEN. Yes; yes. What I am saying is it varies in a particular case. But it is small to him. But that is like saying "What difference does it make if we pay the president of the corporation \$10 million when there are 10 million shares outstanding? It is only a dollar a share."

Mr. STUCKEY. If he is worth it, I don't see why you shouldn't. I think you should. I don't think there is anything wrong with that.

Mr. COHEN. If he is worth it; I am sure the court will take that into account in determining whether or not the fee is reasonable or unreasonable.

Mr. STUCKEY. All right. Now, has the Commission found any malpractices in the field of management fees?

Mr. COHEN. Our whole purpose here, Mr. Stuckey, is that we believe by looking at every other situation that we think at all comparable, that there are malpractices. The charges here are excessive.

Mr. STUCKEY. Have you found any malpractices in the field of management fees?

Mr. COHEN. They are excessive, and to that extent it is a malpractice.

Mr. STUCKEY. They are all?

Mr. COHEN. Sir, I didn't say they all are. I said that there are fees here that are excessive. I think if you look at the exhibits introduced into the record by the industry, and look at the range of fees charged for management of similar size funds, I think there is a reasonable question raised whether one at one end is unreasonably high, whether the other one is unreasonably low. They both may be all right, depending on the facts of that particular case.

Mr. STUCKEY. So you stated, as I understand it, that there are malpractices in the field of management fees now?

Mr. COHEN. In the sense I use it, we do believe that the fees are excessive in a number of areas; yes, sir.

Mr. STUCKEY. So why hasn't some court action been taken?

Mr. COHEN. Because of the standard which Judge Friendly pointed out. Now, so far as the Commission is concerned, we have to deal with section 36, and if you will forgive me, I want to explain that.

Section 36, in its original form, was a criminal statute. The industry objected to that in 1940, and almost at the last minute—I don't remember whether that is precisely correct—the statute was changed to make it a civil statute. But they used the words, "guilty of gross abuse of